

Comments on NEPA Task Force Committee recommendations

I have been a practitioner of NEPA for over 22 years for both the U.S. Forest Service and now at Bonneville Power Administration. Overall, the presence of NEPA has brought about incredible change for the better in how decision making is made in the Federal government. The requirement to consider the results of proposed actions on the environment and communities is essential to sustaining a functional livable world for future generations. I am writing these comments as my individual professional opinion and I am not in any way representing any agency or government opinion.

Early on, it was litigation that forced agencies to take a broader view in how NEPA was approached. However, we have long passed the point where litigation or the threat of it has been beneficial to agency decision-making, particularly with land and resource management agencies that are required to approach their objectives with an eye toward long term goals. For this reason, I would suggest that Land Management Plans for agencies such as the Forest Service, BLM, BIA, Park Service, etc. be the focus of public involvement, NEPA, and any potential litigation. Once the agency direction is set for 10-15 years, no appeal or litigation should be allowed on specific projects being implemented within the guidelines set forth by agency management plans. Perhaps there could be a review of a sample of projects every five years by a citizen committee to ensure plans are implemented as stated. I have watched special interest groups get a death grip on the Forest Service program and tie it in knots such that very little is accomplished in the field.

Regarding your recommendation not to increase funding for government personnel to do NEPA because one person suggested it wouldn't speed up the process is totally illogical. Perhaps it is true that Forest Service personnel are pulled from their regular duties to cover litigation and forest planning. But their regular work is not getting done because NOT ENOUGH STAFF is designated permanently to carry out the NEPA duties. BPA has run into the problem of Forest Service staff not being available to even cooperate on NEPA that BPA needs for fish and wildlife projects on National Forest land proposed by the Northwest Power and Conservation Council. Forest Service staff designated to complete NEPA for non-FS customers is an essential tool to improve customer service and speed up NEPA processes.

Your recommendation 1.2 and 7.2 to place strict timelines and budget caps on NEPA processes is simply not functional. Often times, the true potential impacts of a project are not unearthed until the investigation starts. Once potential impacts to ESA listed species or significant cultural or natural resources are identified, the process becomes enmeshed in necessary coordination and negotiation to identify mitigation where needed. Mitigation may require the identification of replacement habitat and negotiation with landowners. Timelines are simply not enforceable in these circumstances. Many projects are dependent on the provision of information from project proponents who are not always forthcoming with the requested information. And finally, meeting timelines is fully a function of funding environmental planning staff at higher levels than is currently occurring.

I don't think that recommendations 1.1, 1.4, or 4.1 would have any effect on the NEPA process or timelines.

The fine details of recommendation 2.1 make it far too political. Who would define what “local” means, or who would be “directly affected by” a particular action? There is no need to codify this as agency decision makers usually do take this into account.

Recommendation 1.3 for agencies to update their regulations for Categorical Exclusions would help speed up NEPA processes.

Recommendation 2.2 to enforce page limits on NEPA documents would be beneficial. Beyond that, there should be some direction to limit paper through use of electronic EIS materials on CD, DVD, or internet.

Recommendation 5.3 to make mitigation proposals mandatory would be very helpful. Along with this, the requirement to more fully fund monitoring efforts to ensure implementation and determine the effectiveness of mitigation that is proposed.

Recommendation 3.2 would support what we are already doing.

I don’t think the NEPA law itself needs to be amended for the following recommendations. CEQ could provide the needed guidance under the existing law.

3.1 – CEQ could put out guidance and training on designating cooperating agencies.

5.1 – CEQ could put out guidance on what must be considered in the definition of reasonable alternatives. The alternatives must consider potential mitigation costs in their estimate of cost. Early estimates of cost are often way off. BPA has had a case where alternatives were dropped in a DEIS because they were too expensive, but a supplemental DEIS had to be prepared because the total costs of the preferred alternative had not taken into account some very expensive mitigation that would be required, which made other alternatives potentially more cost effective.

5.2 – CEQ could clarify what’s required in the No Action alternative without amending the law.

8.1 – CEQ clarification is all that is needed.

A stronger program of monitoring is needed as part of NEPA. Currently, this has not been a priority and is not being fully funded on a regular basis. Identify the resources that will need monitoring in programmatic documents and use monitoring to make periodic adjustments to program activities. Set up trigger points that would require adjustments to be made.

Make stronger recommendation regarding the use of Programmatic documents for broad programs and then using Supplement Analysis to document individual projects if they fit within the broad direction. Use Tiered RODs to document individual project decisions within the bounds of a previous policy or programmatic ROD.